

Juan Cervantes,

Plaintiff,

versus

Panda Express, Inc.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

Civil Action H-21-489

**ENTERED**

June 29, 2021

Nathan Ochsner, Clerk

### Opinion on Summary Judgment

1. *Background.*

On December 7, 2018, Juan Cervantes was eating at a Panda Express in North Houston. It was raining at the time. When Cervantes went to close the windows to his car, he slipped and fell on the concrete sidewalk outside of the restaurant.

On November 24, 2020, Cervantes sued Panda Express, Inc., for premises liability. Panda has moved for summary judgment. It will prevail.

2. *Premises Liability.*

To succeed on a premises liability claim, Cervantes must show that: (a) there was a condition at the restaurant that created an unreasonable risk of harm; (b) that Panda knew or should have known about; (c) Panda did not use reasonable care to reduce or eliminate that risk; and (d) Panda's lack of care caused Cervantes to fall.<sup>1</sup>

Cervantes says that the concrete was painted red – creating an unreasonable risk of harm. He argues that Panda should have known that painted concrete can be slippery when wet and failed to inspect it to see if it was

---

<sup>1</sup> *Henkel v. Norman*, 441 S.W.3d 249, 251-52 (Tex. 2014).

slip-resistant. He insists that this painted concrete was “more slippery than others.” Cervantes says that the painted concrete caused him to fall and break his arm.

The parties agree that rain is naturally occurring and does not create an unreasonable risk of harm. This dispute is centered on the painted concrete.

The paint on the concrete was red. It was not a clear treatment on the concrete that would have been hidden. The paint was clearly open and obvious. It is fairly common knowledge that concrete sidewalks that have been painted may be slippery when wet from heavy rain. Panda’s duty stops at what is reasonable, and it is unreasonable to expect it to warn customers that the ground may be slippery outside when it rains – even when the ground is painted.

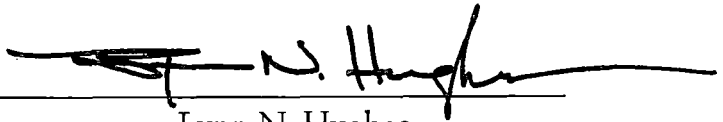
Cervantes also testified that he was in a hurry to get to his car to close his windows. He also has a responsibility to take reasonable care and running in heavy rain is unsafe. His failure to notice the obviously large block of red concrete is not Panda’s fault.

Cervantes’s premises liability claim fails.

3. *Conclusion.*

Juan Cervantes will take nothing from Panda Express, Inc.

Signed on June 29, 2021, at Houston, Texas.

  
\_\_\_\_\_  
Lynn N. Hughes  
United States District Judge